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MEMO

TO: Karen Hughes, Planning Department

CC: Ravalli County Commissioners

DATE: January 22, 2007

FROM: George Corn *Sen for George Corn*

RE: Questions regarding rezoning requests during interim zoning period

Dear Karen:

This memo is in response to your request for guidance on processing rezoning requests during the effective dates of the Interim Zoning Regulation passed by the voters November 7, 2006. Specifically, you forwarded a "rezoning and subdivision" request from Planner Dale McCormick, requesting rezoning for the Hilligoss Residential Zoning District and Subdivision. This request asks for rezoning to a density of one dwelling per one acre, and addresses the zoning criteria in §76-2-203, MCA.

In processing rezoning requests, you should preliminary distinguish requests for rezoning of district boundaries or regulations from requests for a variance from application of a zoning ordinance to a specific parcel of property.

A request for "rezoning" of zoning district boundaries or regulations is governed by §76-2-205. Such requests address comprehensive plans of zoning for a particular district, as opposed to a request for a variance for a particular parcel of land. Rezoning requests made under this statute must be evaluated to ensure that they do not constitute illegal spot zoning. Spot zoning occurs when 1) a requested use is significantly different from the prevailing use of property in the area; 2) the area in which the requested use is to apply is rather small in comparison to the overall district; and 3) a requested change is in the nature of special legislation, *i.e.*, it is designed to benefit a few landowners at the expense of surrounding landowners or the general public. In other words, spot zoning is the process of singling out a small parcel of land for use classification different from that of the surrounding area for the benefit of the owner of such property. As we discussed, in regard to spot zoning, there is no specific size limitation for total acreage; rather, the request must be evaluated in comparison to the entire zoned district.

By contrast, a variance request is a request to grant release to a property owner against compliance with a general zoning ordinance currently in effect. To be granted, 1) a variance must not be contrary to public interest; 2) a literal enforcement of the zoning ordinance must result in unnecessary hardship owing to conditions unique to the property (such as physical topography); and 3) the spirit of the ordinance must be observed and substantial justice done. As you are aware, there are further specific variance guidelines set forth in the Interim Zoning Regulation itself.

For example, in regard to the specific application for rezoning contained in the Hilligoss request, it is clear on its face that the request made is not for rezoning of district boundaries, but for a variance from application of the Interim Zoning Regulation density requirement to that parcel. The property size (120 acres) represents a very small area in proportion to the current zoning district, which includes all of the unincorporated areas of Ravalli County. More importantly, this request is clearly designed to benefit one landowner at the expense of surrounding landowners or the general public. Although the applicant addresses the criteria and guidelines for zoning regulations in §76-2-203, such conditions are not addressed for the entire zoning district, but only the particular piece of property for which the owners request development. This request is more appropriately a variance request that should be heard by the board of adjustment to determine whether the owners should be granted relief from strict compliance with the Interim Zoning Regulation.

In regard to future processing of rezoning requests, citizens and applicants should be allowed to submit requests for agency review under the following guidelines:

1. Requests for voluntary zoning districts under §76-2-101 (Part 1 zoning) should be received and processed through the Planning and Zoning Commission when properly submitted by the appropriate number of landowners.
2. Requests for rezoning made under §76-2-203 and -204 (Part 2 zoning) should be processed through the Planning Office when such requests actually constitute a proposal for zoning district boundaries or regulation on a comprehensive scale. However, given the voters' passage of the Interim Zoning Regulation limiting subdivision density, I am recommending to the commissioners that they send correspondence to the major planners and developers in Ravalli County explaining their intent not to rezone merely to allow subdivision densities greater than that set forth in the Interim Zoning Regulation, as any such rezoning on specific pieces of property would likely constitute illegal spot zoning.
3. Requests to "rezone" submitted with subdivision applications (such as that submitted by Mr. McCormick) should be submitted as variance requests and processed by the board of adjustment.

Finally, in regard to the draft application and review process for rezoning requests that you have begun, I believe such an application and process is a good idea. However, I believe it would be more appropriate to outline such a process after consideration of full-scale zoning and expiration of this Interim Zoning Regulation.

Thank you for all of your hard work and contact me if you have additional questions.